

REMARKS

Claims 1 and 3-12 are pending. Claims 6-11 are withdrawn as nonelected. Claims 1, 3-5 and 12 are rejected.

Claim 1 is amended.

CLAIM REJECTIONS UNDER 35 U.S.C. §112

Claims 1, 3-5, and 12 are rejected under 35 U.S.C. §112 ¶2 as indefinite with respect to the phrase "a stabilizing amount." Claims 1, 3-4, and 12 are rejected under 35 U.S.C. §112 ¶2 as incomplete for omitting essential elements.

Claim 1 is amended to recite "an effective amount for stabilizing over time..." , and to recite that the composition comprises a "dipolar microemulsion solvent and a chromogenic substrate". The amendments are supported at least in the published application at p. 1 ¶¶ 9, 11, thus introducing no new matter.

Applicants respectfully assert that claims 1, 3-5, and 12 are neither indefinite nor incomplete, and request the rejections be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 1, 3-5, and 12 are rejected under 35 U.S.C. §103(a) as obvious over Klopfenstein, Parham, Dunn, and Mitchell, in view of Gosnell and Ward.

Applicants respectfully disagree. In determining obviousness, factors to be evaluated include "the scope and content of the prior art...differences between the prior art and claims at issue...and the level of ordinary skill in the pertinent art." *Graham v. John Deere Co.*, 383 U.S. 1 (1966). A finding of obviousness must be based on more than "mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Klopfenstein teaches an NMP solvent and at least 80% by weight of a mixture of cyclic terpenes. Thus, Klopfenstein's composition is a non-aqueous mixture; it is not a microemulsion, as required by claim 1. The Examiner asserts that Klopfenstein's compositions "may be diluted with water, to form emulsions, prior to use for some purposes." Klopfenstein, however, actually teaches away from formulating its compositions with water, because Klopfenstein teaches "it is not desirable to include water in the compositions as fabricated because of a significant decrease in performance" (col. 6 ¶3).

Parham teaches the use of aqueous NMP as a solvent for a chromogenic substrate, in which the concentration of NMP is about 5% to 20%. Parham does not teach or suggest a NMP microemulsion solvent, as claim 1 requires.

Dunn teaches a composition for sustained delivery of a biologically active agent comprised of a biologically active mixture and a controlled release formulation in the form of an emulsion. Dunn does not teach or suggest a microemulsion, as claim 1 requires.

Mitchell teaches non-aqueous compositions for cleaning contaminated metals, glass, electronic components and printed circuit boards. Hence, Mitchell is non-analogous art because a person of ordinary skill in the art would not look to Mitchell, in the cleaning art, to teach or suggest the claimed invention.

The Examiner combines each of these four references with Gosnell and Ward, neither of which teach nor suggest a dipolar microemulsion solvent. Gosnell mentions X-gal and IPTG with respect to a chromogenic indicator media for color differentiation of microorganisms. The chromogenic indicator media are comprised of a culture medium containing blood or hemin combined with known chromogenic substrates. Ward teaches a method to test the presence of a particular microorganism characterized by a particular enzyme. The method uses a dye-forming substrate, such as X-gal, throughout a polymer matrix to form a colored precipitate when cleaved by an enzyme. Thus, neither Gosnell nor Ward cure the deficiencies of Klopfenstein, Parham, Dunn, or Mitchell.

For at least these reasons, Applicants respectfully assert that Klopfenstein, Parham, Dunn and Mitchell, in view of Gosnell and Ward, do not render claims 1, 3-5, and 12 obvious, and request the rejection be withdrawn.

CONCLUSION

The application is believed to be in complete condition for allowance. No fees are believed due but, if deemed necessary, the Office is authorized to charge them to Deposit Account 20-0809.

The Examiner is invited to contact Applicants' undersigned representative with questions.

Respectfully submitted,

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